

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

GABRIEL KORTLEVER, SY  
EUBANKS, and ALL OTHERS  
SIMILARLY SITUATED,

**Plaintiffs.**

V.

WHATCOM COUNTY,  
WASHINGTON; WHATCOM  
COUNTY SHERIFF'S OFFICE

## Defendants.

No. 2:18-cv-00823

**STIPULATED MOTION AND  
ORDER TO SEAL EXHIBITS 1  
AND 2 OF DEFENDANT'S  
RESPONSE TO MOTION TO  
CERTIFY CLASS; PREVIOUSLY  
FILED**

**NOTE ON MOTION CALENDAR:  
JULY 27<sup>TH</sup>, 2018**

## Basis for Motion

Pursuant to LCR 5(g), Plaintiffs and Defendants jointly move for an order sealing Exhibits 1 and 2 of the Defendant's Response to Plaintiff's Motion to Certify Class, filed June 29, 2018. Docket #12. The exhibits should be sealed because they contain jail booking records, which include health information provided to corrections deputies by the Plaintiffs during their

## Stipulated Motion and Order to Seal - 1

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1 respective booking processes. If relief were not granted, information protected by federal law  
2 may be exposed to the public's view.

3 Under federal regulations "protected health information" is defined as "individually  
4 identifiable health information" that is "transmitted or maintained" in virtually any form. 45 CFR  
5 § 160.103 (definition of "protected health information"). Federal regulations provide that  
6 protected health information should not be used in court proceedings without protection from  
7 general dissemination or at the very least notice to the person who is the subject of the  
8 information with an opportunity to object. 45 CFR § 164.512(e) sets out standards for disclosure  
9 of protected health information in judicial proceedings. While that subsection does not explicitly  
10 cover the precise situation in which a party to a lawsuit includes in its pleadings protected health  
11 information of another party, the clear tenor of the subsection regarding "other legal process" is  
12 that there should be appropriate protective orders entered in any case in which protected health  
13 information is to be disclosed. Here, Exhibits 1 and 2 contain information that should be sealed  
14 to prevent dissemination of the materials beyond the court and counsel. Exhibits 1 and 2 are jail  
15 intake forms from the Whatcom County Jail that were filled out when each named plaintiff  
16 entered the Jail. Both Exhibits contain answers to many questions regarding the physical and  
17 mental health of the named plaintiffs.

18 Redaction of the material is not a feasible alternative because the health information  
19 forms are cited in a part of Defendants' argument and so must be available for review by the  
20 Court. Even though we recognize LCR 5's presumption against sealing, there appears to be no  
21 alternative to sealing that would both allow the Court to see the material and to protect it from  
22 further disclosure in a public court file.

**Certificate of Compliance**

As required by 5(g)(3)(A), on July 13, 2018 counsel for the parties, Mr. Roche and Mr. Midgley, conferred via telephone in an attempt to reach an agreement on the need to file these exhibits under seal. Reaction and other alternatives were explored, but could not cure the underlying issues present in this motion.

## **Conclusion**

Pursuant to LCR 5(g), Exhibits 1 and 2 of the Defendant's Response to Plaintiff's Motion to Certify Class, filed June 29, 2018. Docket #12 should be sealed to prevent the possibility of exposing protected health information to public view.

Respectfully submitted this 17th day of July, 2018.

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### Stipulated Motion and Order to Seal - 3

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14 *Attorneys for Plaintiffs Gabriel Kortlever, Sy  
15 Eubanks, and All Others Similarly Situated*

## ORDER

IT IS HEREBY ORDERED, ADJUDGED and DECREED that good cause exists to maintain Exhibits 1 and 2 of the Defendant's Response to Plaintiff's Motion to Certify Class, filed June 29, 2018, Docket #12, under seal. Pursuant to LCR 5(g)(7), the Clerk of the Court is directed to seal Exhibits 1 and 2 of the Defendant's Response to Plaintiff's Motion to Certify Class.

DATED this 17th day July, 2018.

HONORABLE JUDGE JAMES R. ROBART

John L. Blot

HONORABLE JUDGE JAMES R. ROBART